

TESTIMONY OF PHILLIP COSBY SUPPORTING **SB 147**
State Director, American Family Action of Kansas and Missouri
Senate Correction and Juvenile Justice Committee 2015

Chairman Smith, and honorable members of the Senate Corrections and Juvenile Justice Committee, my name is Phillip Cosby. State Director of the American Family Association / Action of KS & MO. I am honored to speak to you in support of SB 147, “The Community Defense Act” (CDA) , would implement reasonable, court tested and constitutional statewide **Time, Place & Manner restrictions** on Sexually Oriented Businesses (SOB’s).

- **TIME:** Close of SOB’s at midnight till six a.m.
- **PLACE :** A standoff distance of 1,000 feet from homes, churches, playgrounds, schools, day care centers and other SOB’s (new SOB’s only, **pre-existing SOB’s are exempt**)
- **MANNER:**
 - Minors are prohibited from entering an SOB. Prevents minors from being “groomed” during amateur night. Currently, minors can enter an SOB as long as they do not drink.
 - A six-foot standoff distance between dancers and patrons. (Eliminating lap and couch dances; thus reducing Sexually Transmitted Diseases)
 - Elimination of private VIP rooms or booths (where prostitution is frequent and STD transmission is a public health concern)
 - An employee or owner of an SOB cannot have a criminal history
 - Total nudity ban (twice upheld by the Supreme Court)
 - Raised dance platform (static barrier to reinforce six foot distance of dancer from patron, thus reducing “groping”)
 - Elevated operators station that can view all of the SOB activities
 - Sex businesses cannot serve alcohol. As inebriation increases, predators at sex business are emboldened. Few victims self report having been “rolled” at a sex club, plus clubs own internal “security remedies” handle the reporting of incidents.

You have been provided a CD and summaries of negative secondary effects of forty-three cities, and twenty-three court rulings, all awarding lawmakers the constitutional right to regulate SOB’s thus reducing negative secondary effects, which constitute a substantial government interest.

The Missouri Supreme Court ruled in a 7 to 0 unanimous decision upholding the constitutionality of the law on all points. Upon appeal, the SCOTUS reaffirmed its constitutionality by rejecting the appeal. This Kansas CDA is substantively the same law. The deleterious effects on communities are primarily increased crime, increased STD’s, blight, property devaluation, prostitution, human and drug trafficking.

**SCOTUS stated, “Legislators are entitled to rely, in part on an appeal to common sense”.
SOBs are not engines of prosperity, but a community resource liability.**

The Kansas Community Defense Act was crafted by one of the most successful constitutional SOB ordinance attorneys in the nation; Scott D. Bergthold. Mr. Bergthold is the attorney who successfully defended the Missouri CDA with a 7-0 Missouri Supreme Court ruling.

These past twelve years I have spoken to thousands of Kansas citizens and civic officials concerning the negative effects of Sexually Oriented Businesses (SOBs) in communities. This bill has twice enjoyed a super majority vote in this House only to fail in the “old” Senate by the narrowest of margins. Citizen polling consistently support regulatory efforts in the 67 % range.

Knowing the toxic effects of SOBs on communities. Topeka’s previous Police Chief Ron Miller granted me permission to restate his complete support for the CDA and added that the midnight closing time of SOB’s is one of the easiest things for an officer to check for compliance.

Two famous examples of the effects on community among scores are (1) the cleaning up of NYC’s Times Square and the subsequent decrease in crime and increase of tourism, and (2) the current reputation of Atlanta Ga. as the sex trafficking capital of the US in the words of Atlanta’s mayor, Shirley Franklin. (*Atlanta Journal-Constitution March 21st 2007*). Strip clubs promised Atlanta GA. prosperity and an “upscale cosmopolitan” appeal as they expanded to accommodate the International Olympics. What Atlanta inherited was a series of strip clubs that breed prostitution and sexual trafficking. The FBI reports that 13 is the average age of sex trafficking victims and now the #2 moneymaker for organized crime.

The CDA is the other half of a remedy to confront the curse of Human Trafficking. The CDA deals with demand reduction of the sex trade while the Kansas Human Trafficking law serves the harm reduction to victims. One pulls casualties from a rivers flood while the other seeks to remedy who is throwing them in.

Communities are intimidated by a sex industry that boasts an annual US revenue greater than all professional sports; football, baseball, soccer and basketball combined. Many communities in Kansas have no regulatory protection in place. SOB’s often ambush unprotected areas, seeking the path of least resistance, especially along a highway system or main streets of cities. SOB’s boldly declare that there is nothing the community can do and if they do enact SOB regulations, their attorneys do file lawsuits. Such intimidation strategies more often than not, do work. In the case of Abilene Kansas, litigation was in its fifth year, at a cost of \$ 1,000,000 and facing another five years of effort and expense, their will was broken, the case was settled. What city would chose to run a similar gauntlet? SOB ordinance law is not a specialty of city and county attorneys who lack the resources to litigate against a lucrative and experienced industry.

- The Kansas CDA is in substance the same as the successful Missouri SOB law.
- *SOB’s are not engines of economic prosperity but a drain on resources.*
- *SOB restrictions are constitutional.*
- *If the CDA is passed, litigation will be a onetime KS Supreme Court showdown*
- *New Kansas land use studies are not required by the courts* The courts are satisfied that “this leopard does not change its spots”.
- Local Control? : Most Kansas communities do not have the funds or legal expertise to contend with the lengthy litigation that SOBs inflict.
- Infringing of the 1st amendment free speech or “legislating morality” ? The CDA and the court’s rulings are solidly based on the evidence of “Negative Secondary Effects” on communities. The Kansas CDA is content neutral.
- This is not “prohibition”, these are reasonable restrictions from toxic effects.

Beware of confusing “poison pill” amendments seeking to gut the CDA. like...

To only have place or “zoning” restrictions and striking time and manner restrictions. “Place” restrictions affect only new SOBs, This would insure an unrestricted monopoly for pre-existing SOBs. It is unconstitutionally “overly broad” to impose “place” restrictions on existing SOBs at the state level. Local governments can constitutionally navigate land use sensitivities. TIME, PLACE AND MANNER RESTRICTIONS ARE ALL IN THE WORD “ZONING”.

THE ROLE OF ALCOHOL AT STRIP CLUBS; Proximity to alcohol is a key component of the criminological theory of secondary effects. Alcohol aggravates an SOB’s already-high ambient crime risk by lowering the inhibitions and clouding the judgments of the SOB’s patrons. In effect, alcohol makes the soft targets found at the SOB site considerably softer. The available data corroborate this expectation in all respects. Predatory criminals prefer inebriated victims, and SOBs that serve alcohol or that are located near liquor-serving businesses pose accordingly larger and qualitatively different ambient public safety hazards. Governments rely on this consistent finding of crime-related secondary effect studies as a rationale for limiting nudity in liquor serving businesses.

These brick and mortar sex businesses may be the tip of the iceberg of a larger problem of easy cyber access to pornography and obscenity but at least it is a place where case law has driven a stake and makes a constitutional stand to address this growing public safety and health crisis.

How can families and communities contend against this pervasive, aggressive and well-funded sex industry? Would it be good public policy if there were a polluted water source to simply instruct a household to install their own filter? A known environmental polluter would be at the very least restricted, so too the negative effects of SOBs on the quality of life in a community. You would be hard pressed to find a city council that wants more SOBs in their community.

“This is an industry that depends upon all of us to be silent about what we know to be true. By our silence we allow those who are psychological cannibals to prey upon the psychological vulnerabilities of others. So silence is complicity. So I say to the strip club bosses, the pornographers, the pimps and sex traffickers who make money by hurting people and damaging our communities, you will never have the comfort of my silence again. I hope the same is true for you as well. And if it is true, you can be the kind of hero for which this state so deeply hungers.” Dr. Mary Ann Layden

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